



21 DEC 2006

SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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In re Application of
GUIDO GENTNER et al.
Application No.: 10/510,973
PCT No.: PCT/DE03/01075
Int. Filing: 01 April 2003
Priority Date: 12 April 2002
Attorney Docket No.: 2002PO6169WOUS
For: METHOD FOR DETECTING A CHECK-BACK
SIGNAL IN AN OPTICAL TRANSMISSION SYSTEM

DECISION

This application is before the PCT Legal Office for consideration of matters arising under 35 U.S.C. 371. This is also responsive to applicant's "Request for Withdrawal of Notification of Abandonment" via facsimile on 25 July 2006 in the United States Patent and Trademark Office (USPTO) in the above-captioned application. The Request is treated as a petition under 37 CFR 1.8(b).

On 3 May 2005, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required, in that the current declaration was not in compliance with 37 CFR 1.66 or 1.68. The surcharge for filing the oath or declaration after the thirty month period was also required.

On 12 July 2006, a Notification of Abandonment was mailed to applicant indicating that applicant failed to reply to the 905 within the time period set therein.

On 25 July 2006, applicant filed a "Request for Withdrawal of Notification of Abandonment" via facsimile. Unfortunately, the 25 July 2006 submission was not signed by the attorney of record in the above referenced application. 37 CFR 10.18(a) emphasizes that every paper filed by a practitioner must be personally signed by the practitioner and states, in pertinent part, :

For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature, personally signed by such practitioner, in compliance with § 1.4(d)(1) of this chapter.

(Emphasis added.)

In the instant case, the submission on 25 July 2006 was not personally signed by the practitioner and thus is not an acceptable filing.

Furthermore, the "Request for Withdrawal of Notification of Abandonment" does not meet the requirements of 37 CFR 1.8(b).

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.


The evidence filed with the present petition does not satisfy the requirements of 37 CFR 1.8(b). Applicant has not: (1) informed the Office of the previous mailing of the correspondence promptly after becoming aware that the Office did not receive the items by facsimile on 16 June 2005, (2) supplied complete copies of the previously faxed correspondence; and (3) provided a copy of the sending unit's report confirming transmission on 16 June 2005 with a statement which attests on a personal knowledge basis to the previously timely transmission as required by 37 CFR 1.8(b). Applicants' petition under 37 CFR 1.8(b) is **DISMISSED WITHOUT PREJUDICE**.

CONCLUSION

Applicant's "Request for Withdrawal of Notification of Abandonment", treated as a petition under 37 CFR 1.8(b), is **DISMISSED WITHOUT PREJUDICE**.

This application is being held in the PCT Legal Office to await applicant's further reply.

The application remains ABANDONED.


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